program should be granted permanent approval.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. The rule change that implemented the pilot program was published in the **Federal Register** for the full comment period,[9] and no comments were received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[10]

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change is approved on an accelerated basis for a one year period ending on July 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[8] The Commission requests that this report be submitted by April 1996, along with any requests for extension or permanent approval of the pilot.

[9] *See* Securities Exchange Act Release No. (August 25, 1993), 58 FR 45926 (August 31, 1993).

[10] *See* Securities Exchange Act Release No. 31797 (January 29, 1993), 58 FR 7277 (February 5, 1993).

[11] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34–36004; File No. SR–BSE–95–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to a Nine Month Extension of a Pilot Program for Stopping Stock in Minimum Variation Markets

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1995, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a nine month extension of its pilot program regarding stopping stock in minimum variation markets.[1]

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Commission approved pilot provision regarding the execution of stopped orders in minimum variation markets for an additional nine months. The pilot provision expires on July 21, 1995, and this proposal would extend the pilot until April 21, 1996.

The pilot rule requires the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stop price or higher in the case of a buy order (lower in the case of a sell order), (b) after the applicable Exchange share volume is exhausted or (c) at any time prior to (a) or (b) if filled at an improved price.[2] In no event will a stopped order be executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either soliciteed or received.

III. Solicitation of Comments

Interested persons are invited to submit written data; views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[1] The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a separate pilot program for stopping stock in minimum variation markets in Securities Exchange Act Release No. 35068 (Dec. 8, 1994), 59 FR 64717 (Dec. 15, 1994) (File No. SR–BSE–94–09) (''1994 Pilot Approval Order''). The Commission subsequently extended the BSE's pilot program in Securities Exchange Act Release No. 35474 (Mar. 10, 1995), 60 FR 14471 (Mar. 17, 1995) (File No. SR–BSE–95–03) (''March 1995 Pilot Approval Order'').

[2] The Commission notes that, in certain narrow circumstances, a BSE specialist may execute a stopped order before limit order interest on the Exchange is exhausted. To do so, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, a double up or down tick or an out-of-range print.

Moreover, the specialist must follow certain procedures designeed to ensure that the BSE's limit order book is adequately protected. First, the specialist must split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–95–13 and should be submitted by August 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) [3] and Section 11(b) [4] of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder.[5] that specialist transactions must contribute to the maintenance of fair and orderly markets.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[6] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in the marketplace liquidity and the possibility of price improvement for the customer. Accordingly, those exchanges with stopping stock rules,[7] including the BSE, require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote.[8] The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities market.

Despite these potential benefits, the Commission continues to be concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price.[9] These concerns are particularly applicable to the BSE's pilot because of the Exchange's unique provisions regarding the execution of stopped orders at an improved price before pre-existing limit order interest at that price is exhausted.[10]

As a result, in the orders approving the BSE's pilot procedures,[11] the Commission asked the Exchange to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that received price improvement. In addition, the Commission encouraged the BSE to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock.

Although the BSE has provided the Commission with the requested information on the number of orders stopped, their average size, and the percentage of such orders that received price improvement, the BSE has not yet developed a measure of the pilot's impact on limit orders. The Commission believes that the BSE needs to submit comprehensive data on the operation of this rule and, in particular, on the impact on limit orders on the specialist's book before the Commission can evaluate fairly the BSE's use of its pilot procedures. To allow such information to be gathered and reviewed, the Commission believes that it is reasonable to extend the pilot program until April 21, 1996. During this extension, the Commission expects the BSE to respond fully to the concerns set forth below.

Accordingly, before the Commission would consider another extension or permanent approval of the Exchange's pilot program, the BSE must submit comprehensive quantitative data on the impact of stopping stock in minimum variation markets on customer limit orders on the specialist's book and demonstrate that the Exchange has the technological capabilities necessary to monitor specialist compliance with the pilot procedures.

The Commission requests that the BSE calculate data based on twenty stocks chosen by the Commission during three different days showing (1) how many orders and shares were stopped in each stock, (2) the average number of limit orders and the average number of shares on the book ahead of the stopped stock, (3) how many orders and shares received price improvement, and (4) how many orders and shares were on the limit order book at the time each order was stopped and the number of such limit orders and shares that were not executed by the end of the trading day. The Exchange should provide the data for each stock for each day, aggregate figures for each stock for all three days, and for all stocks aggregate numbers for each day and for all three days. The Commission requests that the BSE submit a report describing

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[3] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[4] 15 U.S.C. 78k (1988).

[5] 17 CFR 240.11b–1 (1994).

[6] *See e.g.,* SEC. Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt 2 (1963). When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[7] *See* NYSE Rule 116.30; American Stock Exchange (''Amex'') Rule 109; and Article XX, Rule 37 of the Chicago Stock Exchange (''CHX'') Rules. The relevant NYSE, Amex, and CHX pilot programs permit specialists to stop stock in minimum variation markets. *See also* Securities Exchange Act Release No. 34614 (Aug. 30, 1994), 59 FR 46280 (Sept. 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange (''Phlx'') proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

[8] *See* Interpretation .50 of Section 38(d), Chapter II of BSE's Rules.

[9] The NYSE, Amex, and CHX pilot programs for stopping stock in minimum variation markets raise concerns with respect to bypassing of limit orders on the *opposite side of the market* from the stopped order and not of limit orders on the same side. The BSE's pilot program, however, raises concerns with respect to limit orders on both sides of the specialist's book because of the special provision in the BSE's pilot program regarding the execution of stopped orders at an improved price before the pre-existing limit orders. The NYSE, Amex, and CHX pilot programs have been extended until October 21, 1995, to allow the Commission to determine whether the benefits of the practice substantially outweigh the costs thereof for permanent approval purposes. For further discussion of the NYSE, Amex and CHX pilot programs and the Commission's rationale for extending them until October 21, 1995, *see* Securities Exchange Act Release Nos. 36009 (July 21, 1995), (File No. SR–NYSE–95–26); 36010 (July 21, 1995), (File No. SR–Amex–95–27); and 36011 (July 21, 1995) (File No. SR–CHX–95–17).

[10] *See supra,* note 2. Because the pilot programs on the NYSE, Amex, and CHX do not have a similar provision as the BSE regarding the execution of stopped orders before pre-existing limit orders and the BSE has limitations on its ability to surveil compliance with procedures when the stopped orders are executed before pre-existing limit orders, the BSE pilot program is only being extended for nine months.

[11] *See* 1994 Pilot Approval Order and March 1995 Pilot Approval Order, *supra,* note 1.

its findings on the above matters by November 17, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.

It Is Therefore Ordered, pursuant to Section 19(b)(2) [12] that the proposed rule change (SR–BSE–95–13) is hereby approved on a pilot basis until April 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36011; File No. SR–CHX–95–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to an Extension of the Pilot Program for Stopped Orders in Minimum Variation Markets

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 7, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for stopped orders in minimum variation markets for an additional three (3) month period.[1] The pilot program is set to expire on July 21, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot program implemented to establish a procedure regarding the execution of ''stopped'' market orders in minimum variation markets (usually an ⅛th spread market). In 1992, the Exchange adopted interpretation and policy .03 to Rule 37 of Article XX on a pilot basis to permit stopped market orders in minimum variation markets.[2] Prior to the pilot program, no Exchange rule required specialists to grant stops in minimum variation markets if an out-of-range execution would result.[3] While the Exchange has a policy regarding the execution of stopped market orders generally, the Exchange believes it is necessary to establish a separate policy for executing stopped market orders when there is a minimum variation market.

The Exchange's general policy regarding the execution of stopped orders is to execute them based on the next primary market sale. If this policy were used in a minimum variation market, it would cause the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.[4]

The Exchange's proposed policy would prevent unintended results by continuing a pilot program, established in 1992, for stopped market orders in minimum variation markets.[5] Specifically, the pilot program would require the execution of stopped market orders in minimum variation markets after a transaction takes place on the primary market at the stopped price or worse (higher for buy orders and lower for sell orders), or after the applicable Exchange share volume is exhausted. In no event will a stopped order be executed at a price inferior to the stopped price.[6] In the Exchange's view, the proposed policy will continue to benefit customers because they might receive a better price than the stop price, yet it also protects Exchange specialists by eliminating their exposure to executing potentially large amounts of pre-existing bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the

[1] The Exchange originally received approval of the pilot program in Securities Exchange Act Release No. 30189 (Jan. 14, 1992), 57 FR 2621 (Jan. 22, 1992) (File No. SR–MSE–91–10) (''1992 Approval Order''). The Commission subsequently extended the Exchange's pilot program in Securities Exchange Act Release Nos. 31975 (Mar. 10, 1993), 58 FR 14230 (Mar. 16, 1993) (File No. SR–MSE–93–04) (''March 1993 Approval Order''); 32457 (June 11, 1993), 58 FR 33681 (June 18, 1993) (File No. SR–MSE–93–14) (''June 1993 Approval Order''); 33790 (Mar. 21, 1994), 59 FR 14434 (Mar. 28, 1994) (File No. SR–MSE–93–30) (''1994 Approval Order''); 35431 (Mar. 1, 1995, 60 FR 12796 (Mar. 8, 1995) (File No. SR–CHX–95–04) (''March 1995 Approval Order'').

[2] *See* 1992 Approval Order, *supra*, note 1.

[3] The term ''out-of-range'' means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[4] For example, assume the market in ABC stock is 20–20⅛; 50 x 50 with ⅛th being out of range. A customer places an order with the Exchange specialist to buy 100 shares of ABC at the market and a stop is effected. The order is stopped at 20⅛ and the Exchange specialist includes the order in his quote by bidding the 100 shares at 20. If the next sale on the primary market is for 100 shares at 20, adopting the Exchange's existing general policy to minimum variation markets would require the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would trigger the requirement for the Exchange specialist to execute all pre-existing bids (in this case 5,000 shares) based on the Exchange's rules of priority and precedence. This is so even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, Exchange Rule 37 (Article XX) requires the Exchange specialist to fill orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would cause at most 100 of the 5,000 share limit order to be filled on the Exchange. However, the Exchange's general policy regarding stopped orders, if applied to minimum variation markets, would require the 100 share stopped market order to be filled, and as a result, all pre-existing bids at the same price to be filled in accordance with Exchange Rule 16 (Article XX).

[5] *See* 1992 Approval Order, *supra*, note 1.

[6] Exchange Rule 28 (Article XX) states:

An agreement by a member or member organization to ''stop'' securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.